

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1111 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE N.J. PANDYA and
MR.JUSTICE H.L.GOKHALE

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AMULAKH KHUSHALDAS

Versus

STATE OF GUJARAT

1. Whether Reporters of Local Papers may be allowed
to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy
of judgment?
4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder?
5. Whether it is to be circulated to the Civil
Judge?

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Appearance:

MR YS LAKHANI for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 28/02/97

ORAL JUDGEMENT

(Per Pandya, J.)

On the night of 11.10.1992 at about 2.30 AM near main gate of the S.T. Bus stand of the city of Palanpur police party was lying in wait for a suspect when the information of which was received through an informant earlier. When the suspect came, he was accompanied by another person and both were searched. Accused no.1 was found to be carrying a cloth bag, referred to as a bag of military colour. The said cloth bag was found to be containing three different bags suspected to be of narcotics.

2 The panchas were present. For weighing the bags weights and measures personnel were called and one bag containing 3 kg and another two containing 1 kg each of substance suspected to be opium. Sample of 100 g of each of three bags was drawn for examination purpose and the remaining material was packed and sealed.

3 This resulted into a chargesheet and Sessions Case No.23 of 1993. The learned Additional Sessions Judge, Banaskantha at Palanpur, by his judgment dated 3.10.1994 acquitted original accused no.2 and convicted accused no.1-appellant and awarded 10 years' RI with fine of Rs.1,00,000/-.

4 It is this convict-accused who has come to this Court by way of the present appeal. Several points were urged. The point which is now being discussed is, in our opinion, will go to the root of the matter. It relates to the identity of the muddamal which was seized according to the prosecution near S.T. gate. Lakhubhai Amubhai, PW No.3, Exh.14, in his deposition as also in the cross-examination at page 54 clearly states that from all the three bags containing opium three samples were drawn and they were sealed and kept in a particular manner. In case of all the other bags slips containing names of accused with the signature of the panchas as also name of the PI were put and thereafter they were sealed. So far as the bulk quantity is concerned the three different bags were packed differently and were put collectively in a bag and thereafter that bundle was kept in the said military colour bag of the accused and it was then packed and sealed in the manner employed with sealing of other bags.

5 This packet of bulk sample is referred to as Article No.7 and when it was opened before the trial Court in the course of the deposition of one one of the panch witnesses, PW No.1, page 33, exh.9, at page 37 it

was not found to be containing the slip as indicated above. On top of it we also find from the deposition of the write constable that the military colour packet was sealed while this is not the position found by the persons who were actually handling the articles, namely, Mafatlal Virabhai, exh.20 page 76 and Mahendrakumar Harilal exh.17 page 65. They have shown the said green colour bag, a separate military colour bag being so brought and deposited in that manner. The mystery about missing slip in the bulk sample as well as in the three representative samples as also the said green colour bag having itself been sealed but not received as such and in that manner by the PSO or by the LCB who officially kept the muddamal articles have created an atmosphere of considerable doubt with regard to the prosecution case.

Once the doubt is created about the article said to be narcotic, obviously, the benefit thereof will go to the accused as the prosecution can be said to have failed to establish beyond reasonable doubt that what was found in the possession of the accused was nothingelse but narcotic. Under the circumstances, the appeal succeeds. The order or conviction and sentence is set aside. The appellant is ordered to be set at liberty if not required in any other case. Fine if paid is ordered to be refunded.
